SNELL & WILMER LLP
Alan L. Sullivan (3152)
Todd M. Shaughnessy (6651)
Amy F. Sorenson (8947)
15 West South Temple
Gateway Tower West
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

CRAVATH, SWAINE & MOORE LLP
Evan R. Chesler (admitted pro hac vice)
David R. Marriott (7572)
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

Attorneys for Defendant/Counterclaim-Plaintiff
International Business Machines Corporation

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC., Plaintiff/Counterclaim-Defendant, -against- INTERNATIONAL BUSINESS MACHINES CORPORATION, Defendant/Counterclaim-Plaintiff.	Civil No. 2:03CV-0294 DAK Honorable Dale A. Kimball Magistrate Judge Brooke C. Wells

DECLARATION OF DANIEL FRYE

I, Daniel Frye, declare as follows:

1.   I am the co-founder and Vice President responsible for managing the Linux Technology Center ("LTC") at International Business Machines Corporation ("IBM").

2.   This declaration is submitted in connection with the lawsuit brought by SCO against IBM, entitled The SCO Group, Inc. v. International Business Machines Corporation, Civil No. 2:03CV-0294 DAK (D. Utah 2003). I make this declaration based upon personal knowledge.

3.   I have read SCO's memorandum in support of its renewed motion to compel and am familiar with the scope of the additional discovery that SCO seeks from IBM relating to the development history for all of IBM's Linux contributions. As I illustrate herein, the effort required to collect all of the materials sought by SCO would be immense, and would impose an enormous burden on IBM.

4.   The LTC is a center of competency and development for IBM in the area of Linux and open source. Currently there are approximately 600 IBM employees who are assigned directly or indirectly to the LTC, of which more than 300 are developers who have made contributions to Linux. These include programmers in approximately ten countries throughout the world.

5.   As Vice President, LTC, I am responsible for overseeing IBM's Linux technical strategy and participation in the Linux development community. Based upon my duties and responsibilities at IBM, I have personal knowledge of IBM's Linux activities, including the Linux development process.

6.   The development of the Linux operating system, unlike proprietary

operating systems such as AIX and Dynix, does not occur confidentially within any individual

company, but rather is accomplished through a community effort in the public view. When IBM

employees make contributions to Linux, they do so in a public way. That is, they post onto

publicly accessible mailing lists and code repositories such as the Linux Kernel Mailing List

(LKML) or SourceForge (www.SourceForge.net). Once posted to one of these public venues,

the Linux development community is given the opportunity to comment on the contribution prior

to a decision being made as to whether the contribution should be accepted into Linux. This

commentary, along with interim versions and code patches of the programming source code, is

generally maintained and publicly accessible in these venues and at archiving sites.

7.   Because Linux is developed publicly, through a community effort, IBM's

Linux development efforts are not centralized. IBM developers working on Linux contributions

are spread throughout IBM, working in numerous different areas of technology development, in

many different geographical locations across the globe.

8.   Similarly, neither the LTC, nor IBM generally, has any policy or formal

process for centrally maintaining internal development material (e.g., programming notes, design

documents, and internal code drafts) of individual IBM programmers who participate in the

Linux community and contribute to Linux. Programmers who contribute to Linux are generally

at their discretion, subject to IBM's general corporate guidelines, as to whether they create any

such material at all, and there is no uniformity in what materials are created.

9.   In order to collect all of the development history documentation sought by

SCO, it would be necessary to search the individual offices and workstations of each of the more
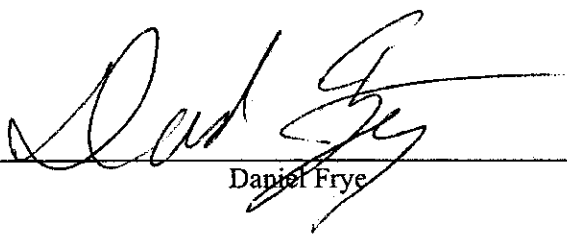
than 300 IBM developers throughout the world who have made Linux contributions. It would also be necessary to interview individual managers, team leads, support staff and all programmers for each of the more than 100 Linux projects that IBM has established since it initiated its Linux development efforts in 1999 to determine whether that specific project utilized any shared server space that might contain development documentation related to that project.

10.   The identification and collection of all of this documentation would require extraordinary effort, significantly burdening IBM. I estimate that the materials requested amount to hundreds of thousands of documents, comprising a million pages or more of paper. The production of the these documents would require a concerted effort spanning many months and result in significant expenses of time, energy and money.

11.   I declare under penalty of perjury that the foregoing is true and correct.

Executed: September 26, 2005

Beaverton, Oregon
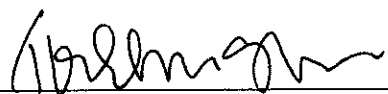
_____
Daniel Frye

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of September, 2005, a true and correct copy of the

foregoing was sent by U.S. Mail, postage prepaid, to the following:

Brent O. Hatch
Mark F. James
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101

Stephen N. Zack
Mark J. Heise
BOIES, SCHILLER & FLEXNER LLP
100 Southeast Second Street, Suite 2800
Miami, Florida 33131

Robert Silver
Edward Normand
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, NY 10504

_____
Todd Shaughnessy